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IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH ex rel. the
DIVISION OF CONSUMER
PROTECTION,

Plaintiff,

vs.

IVAN WALKER, INC., a Utah
Corporation, d/b/a WALKER'S
FOOD AND FUEL, d/b/a WALKER OIL
COMPANY

Defendant

COMPLAINT

ALLEGING VIOLATIONS OF THE
UTAH MOTOR FUEL MARKETING ACT

CASE NO. 990908005

JUDGE: IWASAKI

Plaintiff, the STATE OF UTAH ex rel. the DIVISION OF CONSUMER PROTECTION,
by and through the Utah Attorney General, complains against the defendant, IVAN WALKER, INC.,
d/b/a WALKER'S FOOD AND FUEL, d/b/a WALKER OIL COMPANY, and alleges as follows:

A. PARTIES, JURISDICTION AND VENUE

1. Plaintiff is an agency of the State of Utah, having its principal offices in Salt Lake County, Utah.

2. Defendant is a Utah corporation doing business in Salt Lake County, Utah and in other locations in Utah. Defendant markets branded motor fuel products under the Phillips 66 brand.

3. Plaintiff brings this action under the authority of the Utah Motor Fuel Marketing Act, Title 13, Chapter 16, Utah Code Ann. (the "Act"), for injunctive relief and civil penalties as provided by the Act. Under the Act, the district courts of this State may hear and determine all cases brought under the Act.

4. Under the Act, venue lies in any county where the defendant is doing business or in the county where the plaintiff resides. Accordingly, venue in this district is proper.

B. ALLEGATIONS

5. The allegations contained in paragraphs 1 through 4 are hereby incorporated by reference and re-alleged as if fully set forth herein.

6. Utah Code Ann. § 13-16-4 (1) prohibits any person engaged in commerce in Utah from selling or offering to sell motor fuel below cost, as defined in Utah Code Ann. § 13-16-2 (2), if the intent or effect of the sale or offer is to injure competition or if the intent and purpose of the sale or offer is to induce the purchase of other merchandise, to unfairly divert trade from a competitor, or otherwise to injure a competitor.

7. On or about July 17, 1999, defendant offered and sold motor fuel from its retail gasoline station and convenience store located at 800 South Main Street, Heber, Utah, at a price or prices which were below defendant's cost, as defined in the Act. Upon information and belief,

plaintiff alleges that defendant sold branded regular unleaded gasoline at \$0.999 per gallon, branded mid-grade unleaded gasoline at \$1.099 per gallon and branded premium unleaded gasoline at \$1.199 per gallon on this date at this location, as shown by the photographs of defendant's price signs at this station on July 17, 1999, which are attached hereto as Exhibit "A" and incorporated herein by reference.

8. Prior to July 17, 1999, defendant advertised that it would offer and sell regular, unleaded gasoline at this location for \$0.999 per gallon. This advertising included an advertisement on July 14, 1999, in The Wasatch Wave, a local newspaper, a copy of which is attached hereto as Exhibit "B" and is incorporated herein by reference. This advertising further included radio ads on KSOP. The effect of this advertising was to draw customers to plaintiff's Heber station and away from the retail gasoline stations of its competitors.

9. Upon information and belief, plaintiff further alleges that on or about July 18, 1999, defendant raised its pump prices on branded regular unleaded gasoline, branded mid-grade unleaded gasoline, and branded premium unleaded gasoline to \$1.299 per gallon, \$1.399 per gallon and \$1.499 per gallon, respectively. On or about July 19, 1999, defendant further raised its pump prices on these gasoline brands to \$1.329, \$1.429 and \$1.529 per gallon, respectively.

10. Upon information and belief, plaintiff alleges that the weekly per gallon terminal or "rack" prices (FOB terminal, excluding applicable taxes, Superfund charges and discounts) for branded regular unleaded gasoline, branded mid-grade unleaded gasoline, and branded premium unleaded gasoline, at the Phillips 66 refinery in Woods Cross, Utah, during the period June 17, 1999, through July 15, 1999, were as follows:

Prices Per Gallon For Week Ending

<u>Branded Grade</u>	<u>6/17/99</u>	<u>6/24/99</u>	<u>7/1/99</u>	<u>7/8/99</u>	<u>7/15/99</u>
Regular unleaded	\$0.6950	\$0.6950	\$0.7025	\$0.7200	\$0.7400
Mid-grade unleaded	\$0.7425	\$0.7425	\$0.7500	\$0.7675	\$0.7875
Premium unleaded	\$0.7900	\$0.7900	\$0.7975	\$0.8150	\$0.8350

Source: Oil Price Information Service (OPIS).

11. Upon information and belief, plaintiff further alleges that the applicable federal and Utah gasoline taxes and Utah State cleanup charges imposed on the gasoline products described in Paragraph 10 total not less than \$0.4315 per gallon. Adding only these taxes and charges (but not freight from the terminal to defendant's station in Heber, Utah, or any other additional charges or overhead costs), the cost for these products to defendant during this period would be not less than \$1.1165 to \$1.1715 per gallon for regular unleaded gasoline, \$1.1740 to \$1.2190 per gallon for mid-grade unleaded gasoline and \$1.2215 to \$1.2665 for premium unleaded gasoline, less any discounts, allowances or rebates received by defendant from the seller.

12. Upon information and belief, plaintiff further alleges that no lawful discounts, allowances or rebates received by defendant could be in amounts which would lower these prices, together with freight charges from the terminal to defendant's Heber station and defendant's direct and indirect overhead costs applicable to this station, to amounts which would be less than the prices at which these products were offered and sold by defendant on July 17, 1999, as alleged in Paragraph 7 (that is, \$0.999 per gallon for branded regular unleaded gasoline, \$1.0999 per gallon for branded mid-grade unleaded gasoline, and \$1.199 per gallon for branded premium unleaded gasoline).

13. Defendant's offers and sales of motor fuel below cost were made with the intent, or

had the effect, of injuring competition in the relevant geographic market.

14. Defendant's offers and sales of motor fuel below cost were further made with the intent and purpose of inducing the purchase of other merchandise, to unfairly divert trade from a competitor or from competitors, or otherwise to injure a competitor or competitors.

15. Defendant's offers and sales of motor fuel below cost have injured competition and one or more of defendant's competitors, have induced the purchase of other merchandise from the defendant and have unfairly diverted trade from one or more of defendant's competitors. Defendant's below cost sales of motor fuel has forced defendant's competitors to choose between losing money by joining the defendant in selling below cost, or continuing to sell at or above cost and losing customers and revenue from reduced volume of motor fuel sold. Whichever decision is made by defendant's competitors, defendant's continued below cost sales threatens eventually to cause defendant's competitors to lose market share and to jeopardize their ability to remain in the retail motor fuel business, especially small competitors who can't use profits from sales in other markets to offset losses incurred from meeting defendant's below cost sales.

16. Conduct such as that engaged in by defendant, if continued, threatens to concentrate market shares in fewer retail gasoline operations, thereby lessening or eliminating competition in the motor fuel industry and ultimately leading to substantially higher retail prices for motor fuel for the general public.

17. Defendant's actions violate the provisions of the Act, particularly Utah Code Ann. § 13-16-4 (1).

18. Pursuant to Utah Code Ann. § 13-16-7, plaintiff is entitled to an injunction against defendant enjoining it from making below cost sales of motor fuel and to the imposition of a civil

penalty against defendant in an amount not to exceed \$5,000 per day for each business location of the defendant where a violation of the Act occurred.

19. Pursuant to Utah Code Ann. § 13-16-7, plaintiff is further entitled to recover its costs and reasonable attorney's fees and its reasonable investigative expenses incurred in this matter.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for a judgment in favor of the plaintiff and against the defendant as follows:

A. That defendant be adjudged to have violated the Act, particularly Utah Code Ann. § 13-16-4 (1).

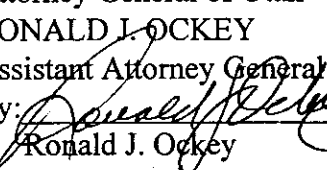
B. That defendant be permanently enjoined from selling or offering to sell motor fuel below cost, as defined in the Act.

C. That defendant be assessed a civil penalty in the amount of \$5,000 per day for each business location of the defendant where a violation occurred.

D. That plaintiff be awarded its costs and reasonable attorney's fees and its reasonable investigative expenses incurred in this matter.

E. For such other and further relief as the Court deems just.

DATED this 9th day of August, 1999.

JAN GRAHAM
Attorney General of Utah
RONALD J. OCKEY
Assistant Attorney General
By: 
Ronald J. Ockey
Attorneys for Plaintiff

Plaintiff's Address:

Utah Division of Consumer Protection

160 East 300 South, Second Floor

Salt Lake City, Utah 84111



EXHIBIT
A

Customer Appreciation Day!

This Saturday! In Heber City!
800 South Main Street Walker's/Wendy's Combo!

* All Prices run Saturday July 17, 1999 10am - 10pm

Hot Dogs
3/99¢

Free
Balloons
for the Kids

C'mon in
just to
Say Hello!

All
Coke Products
12-Pak

\$2.99*

Come & See
**the Jazz Bear
& the
Jazz Dancers**

Noon to 2:00 pm

Enter
Drawings for
Give-A-Ways

DO NOT NEED TO
BE PRESENT TO WIN

**All Fountain
Drinks are
Buy 1 Get 1 Free**
Including Refills

Free
Jr. Frosty
with any
Wendy's
purchase!

Free
Popcorn
w/purchase

99.9¢

Per Gallon Gasoline*

REGULAR UNLEADED, 50 GALLON MAXIMUM

All
Pepsi Products
12-Pak

\$2.99*

Free
Carwash with
8 Gallon Gas
Purchase*

Walker's Wendy's

800 South Main Street in Heber City

EXHIBIT

B